April 2004

Update: Adoption Proceedings Benchbook

CHAPTER 2

Freeing a Child for Adoption

2.13 Termination Pursuant to a Step-Parent Adoption

C. Grandparent Visitation

Insert the following text on page 65, immediately before Section 2.14:

In *Johnson v White*, ___ Mich App ___, ___ (2004), the Court of Appeals held that the decision in *DeRose v DeRose*, 249 Mich App 388 (2002), which found MCL 722.27b unconstitutional, should be retroactively applied. In *Johnson,* the defendant moved his children to another state in violation of the trial court's grandparent visitation order. ___ Mich App at ___. The lower court found the defendant in contempt* of court for failing to comply with the court's grandparent visitation order. The defendant argued that the order was void *ab initio* because the court's order was entered pursuant to MCL 722.27b, which was found unconstitutional in *DeRose, supra*. The Court of Appeals stated:

> "[W]e find that the *DeRose* decision clearly established a new principle of law by addressing for the first time the constitutionality of MCL 722.27b and declaring the statute unconstitutional. We also find that the purpose of the *DeRose* decision would best be served by giving it full retroactive application.
>
> . . .
>
> "[T]he effect of *DeRose* being given full retroactive application is only to terminate those [grandparent] visitation rights. And so we hold that the *DeRose* decision should be applied retroactively. Accordingly, we vacate the trial court's . . . order granting plaintiffs grandparenting time as it is void *ab initio*." ___ Mich App at ____. (Internal citations omitted.)

*For a discussion of the Court's contempt holding, see the April 2004 update to the *Contempt of Court Benchbook (Revised Edition)* (MJI, 2000).

CHAPTER 6

Formal Placement and Action on the Adoption Petition

6.7   Grandparent Visitation

Insert the following text on page 207, immediately before Section 6.8:

In *Johnson v White*, ___ Mich App ___, ___ (2004), the Court of Appeals held that the decision in *DeRose v DeRose*, 249 Mich App 388 (2002), which found MCL 722.27b unconstitutional, should be retroactively applied. In *Johnson,* the defendant moved his children to another state in violation of the trial court's grandparent visitation order. The lower court found the defendant in contempt* of court for failing to comply with the court's grandparent visitation order. The defendant argued that the order was void *ab initio* because the court's grandparent visitation order was entered pursuant to MCL 722.27b, which was found unconstitutional in *DeRose, supra*. ___ Mich App at ___. The Court of Appeals stated:

> "[W]e find that the *DeRose* decision clearly established a new principle of law by addressing for the first time the constitutionality of MCL 722.27b and declaring the statute unconstitutional. We also find that the purpose of the *DeRose* decision would best be served by giving it full retroactive application.
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> "[T]he effect of *DeRose* being given full retroactive application is only to terminate those [grandparent] visitation rights. And so we hold that the *DeRose* decision should be applied retroactively. Accordingly, we vacate the trial court's . . . order granting plaintiffs grandparenting time as it is void *ab initio*." ___ Mich App at ____. (Internal citations omitted.)

*For a discussion of the Court's contempt holding, see the April 2004 update to the *Contempt of Court Benchbook (Revised Edition)* (MJI, 2000).